

National Marine Fisheries Service Marine Mammal and Endangered Species Research and Enhancement Permits and Parts Permits – Justification for Collection of Information

Background

Under section 104 of the Marine Mammal Protection Act of 1972 (MMPA) and section 10(a)(1)(A) of the Endangered Species Act of 1973 (ESA), NMFS may issue permits for scientific research purposes or to enhance the propagation, survival, or recovery of protected marine species. Under the Fur Seal Act of 1966 (FSA), NMFS may authorize research on fur seals of the North Pacific pursuant to a permit.

Pre-application Guide (PAG)

The information obtained when filling out the PAG is necessary to determine what type of permit/permit application is needed.

Completing an Application

Give Complete Information

We return incomplete applications with explanation or request additional information. If we request additional information and do not receive it within 60 days, we may withdraw the application. Applicable regulations: 50 CFR 216.33(c)(4) and 222.302(c)(1).

Project Information Page

File Number: Automatically generated by APPS. This number is necessary for identification of the application in the APPS system/database, in the *Federal Register* notices of receipt and issuance or denial, during correspondence with the applicant, and to identify the permit administrative record. This number is also used as the permit ID number when issued.

***Project Title:** Necessary for identification of subject matter/type of permit application. Applicable regulations: 50 CFR 216.33(a) and 222.308(b)(1).

***Project Status:** Automatically generated by APPS. Indicates a new permit is requested.

Previous Federal or state permit #: Not required. If entered, this information provides permit analysts with the applicant's previous permit number to determine compliance with a previous permit's terms and conditions.

***Permits Requested:** Automatically generated by APPS. This is necessary to determine the appropriate permit to issue and the required regulatory and statutory processing and issuance requirements, and applicable permit restrictions.

***Where will the activities occur?:** Permits must specify locations of authorized take or import/export. Necessary to determine if work will be conducted in U.S., and therefore, whether a permit is needed. This information is also necessary for considering impacts to protected species and for conducting the appropriate environmental analyses under NEPA, MMPA, and ESA. Applicable regulations/statutes: 50 CFR 216.36(a)(1)(iii), and MMPA section 104(b)(2)(B); 50 CFR 222.308(b)(6)(i) and (iv), and 222.308(d)(2).

Describe the specific geographic area(s) where the proposed research and any related activities would occur. The Action Area includes all areas to be affected directly or indirectly by the permitted research (the Federal Action) and not merely the immediate area involved in the action [50 CFR §402-02] 50 CFR 402.14 (c).

***Research Timeframe and Sampling Season/Project Duration:** Permits must specify the period during which the permit is valid. Permits are valid for five years unless a shorter time period is requested. This information provides a basis to determine (1) whether it is likely that the objectives will be met during the time allotted with the available resources; (2) when the permit is needed (i.e., the start date); (3) impacts to the affected species during sensitive periods such as nursing and breeding; and (4) potential cumulative impacts that may arise from multiple permit holders working on the same species, in the same location, and at the same time. Applicable regulations/statutes: 50 CFR 216.35(b), 216.36(a)(iv), and MMPA section 104(b)(2)(C); 50 CFR 222.308(b)(5)(i) and (b)(6)(iii).

***Abstract:** NMFS is required to publish notice of receipt of an application in the *Federal Register* for a 30-day public comment period. To ensure that an accurate summary of the application is published, applicants are requested to include a short abstract of the request. Applicable regulations/statutes: 50 CFR 216.33(d) and MMPA section 104(d)(2); and 50 CFR 222.303(b).

Project Description Page

***Project Purpose: Hypothesis/Objectives and Justification**

The applicant must provide the objectives of their proposed activity, give a hypothesis (for research), explain how the activities will ensure survival of the species (for enhancement), and provide justification for the sample size and for requesting takes of

protected species. This information is required to determine (1) if the applicant is proposing bona fide scientific research, (2) if the proposed enhancement activities are necessary and consistent with a species' recovery plan, (3) ensure the sample size is appropriate to complete the objectives and not unnecessarily adversely impact the target species, (4) whether the activities can be accomplished with a non-protected species. The applicant must also explain the role of Co-investigators to ensure that we can assess their qualifications for the activities to be conducted and that the personnel are reasonable in number. For threatened and endangered species, additional justification is required, such as how the activity will contribute to the objectives of the species' recovery plan and other specific information required pursuant to the MMPA, ESA, and their implementing regulations. Applicable regulations/statutes: 50 CFR 216.34(a)(3) and 216.41(b); 222.308(b)(4-5), 222.308(b)(10), and 222.308(c)(4), and statutory requirements (MMPA 104(c) and ESA section 10(a)(1)(A)).

***Project Description:** This section requires the applicant to precisely describe the activities they are proposing. Special exception permits must specify the number and kind of species authorized to be taken, the location of take, and the manner of take.

Section 104(b) of the MMPA requires permits to specify the number and kind of marine mammals authorized to be taken, the manner and location of the taking, and the period of validity for the permit. Section 104(c)(1) of the MMPA requires permits to specify the methods of capture, supervision, care and transportation and requires that the taking is consistent with the purposes of the MMPA. Section 104(c)(3) of the MMPA requires applicants for scientific research permits to submit information indicating that the taking is required to further a bona fide scientific purpose. NMFS must determine that the proposed method of taking is humane and will not present any unnecessary risks to the health and welfare of marine mammals; and that the proposed activity by itself or in combination with other activities, will not have a significant adverse impact of the species or stock. Applicable regulations: 50 CFR 216.34(a)(1-7), 216.36(a)(1)(i-ii), and section 216.41.

Permitting regulations under the ESA require the applicant to provide a detailed description of how the species will be used in order to determine whether the permit will operate to the disadvantage of the species, and whether the permit will further a bona fide and necessary research or enhancement purpose. Detailed protocols for transporting animals must also be provided. In addition, ESA section 7 regulations require a description of the action and the manner in which the action may affect listed species or critical habitat, including methods and mitigation. Applicable regulations: 50 CFR 222.308(b)(4)(ii), (b)(5-7), and (c-d); and 50 CFR 402.14 (c).

Description of the manner in which the action may affect listed species or critical habitat

(c) Initiation of formal consultation. A written request to initiate formal consultation shall be submitted to the Director and shall include:

- (1)** A description of the action to be considered;
- (2)** A description of the specific area that may be affected by the action;

- (3) A description of any listed species or critical habitat that may be affected by the action;
- (4) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;
- (5) Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and
- (6) Any other relevant available information on the action, the affected listed species, or critical habitat.

(d) Responsibility to provide best scientific and commercial data available. The Federal agency requesting formal consultation shall provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effects that an action may have upon listed species or critical habitat. This information may include the results of studies or surveys conducted by the Federal agency or the designated non-Federal representative. The Federal agency shall provide any applicant with the opportunity to submit information for consideration during the consultation.

Import/Export requirements: NMFS must determine that marine mammals or their parts to be imported are taken humanely and in compliance with the Acts. To satisfy this requirement NMFS needs to know the country in which the taking will occur, how the taking will be conducted, and the marine mammal management program/legal authority of the country of taking. Any marine mammal part imported must not have been obtained as a result of lethal take inconsistent with the Acts unless authorized by the Office Director. An exception to certain restrictions in the Acts is provided if the import or export is necessary to benefit the health or welfare of the protected species concerned. Section 104(c)(9) of the MMPA states, "No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit...". The applicant is required to submit information regarding exporting live marine mammals to ensure that (1) all applicable laws are met, whether it is U.S. or foreign and (2) that protected species taken (including held captive) in a foreign country are not taken or held in an inhumane manner because of less-protective laws of a foreign country. ESA section 9 prohibits import and export of endangered species unless otherwise allowed through an exception. Applicable regulations: 50 CFR part 14; 50 CFR 216.33(b), 216.34(a)(7), 216.35(c-d), 216.36(a)(1)(iii), 216.37(d), and 216.41(c)(1)(v); ESA section 9; 50 CFR 222.308.

NMFS must conduct a NEPA analysis for each permit issued, which requires a description of the proposed action in order to determine the effects such action will have on the target and non-target species and the environment. As required, NMFS must request consultation under section 7 of the ESA regarding impacts to threatened and endangered species, which also requires detailed a description of the proposed action in order to determine whether the activity will jeopardize the existence of the listed species

or adversely modify critical habitat. Applicable regulations: 50 CFR 216.33, NEPA CEQ regulations, and 50 CFR part 402 (interagency consultations).

Project Supplemental Information Page

***Status of the Affected Species:** Permits must specify the species authorized to be taken and must be issued in accordance with the appropriate statutes and regulations. This information is needed for assurance that the applicant is aware of the status of species for which they are applying to take or import/export, and that the applicant is aware of the requirements under the appropriate Acts, including requirements for consultation under section 7 of the ESA. NMFS must determine that for enhancement purposes, the species or stock identified in the application is in need of enhancement for its survival or recovery and only animals and parts necessary for enhancement are taken. NMFS must also determine that any requested import or export will not result in taking of marine mammals beyond that authorized by the permit. Applicable regulations: 50 CFR 216.33(c)(2)(iii), 216.34 (a)(3) and (7), 216.36 (a)(1)(i), 216.41(b)(5) and (6), 222.308 (b)(6)(i and iv), and 222.308(c)(5) and (d)(1); 50 CFR 402.14 (c) and (d).

In addition, the applicant should be made aware that applicable import/export requirements must be met with regard to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) pursuant to U.S. Fish and Wildlife Service regulations.

***Attach a Literature Review File and Attach a References File:** The applicant must demonstrate whether the proposed activities are different from or build upon past research; whether the activities are unnecessarily duplicative and thus may operate to the disadvantage of the species; or whether the activities are necessary and would contribute to the conservation of the species. This information will be used with other components of the application to determine that the proposed activity will further a bona fide scientific research or enhancement purpose. Applicable regulations: 50 CFR 216.3, 216.41(b)(1) and 222.308(c)(4); 50 CFR 402.14 (c) and (d).

***Lethal Take:** This information is necessary to ensure that prohibitions and restrictions on the lethal take of protected species are taken into consideration. Under the MMPA, if lethal take is proposed, the applicant must demonstrate that non-lethal methods are not feasible. For depleted, endangered, or threatened species, the results must directly benefit that species or fulfill a critically important research need. The taking must be humane and any permanent removal of a marine mammal from the wild must be consistent with any applicable quota established by the Office Director. The applicant must demonstrate that the take of marine mammals will not likely have a significant adverse impact on the species. For endangered marine mammals, the applicant must demonstrate that the activity will be conducted consistent with the purposes and policies set forth in section 2 of the ESA. Under the ESA, the applicant must describe how the species will be used and must demonstrate that the permit, if granted and exercised, will not operate to the disadvantage of the species and therefore must justify the lethal take of listed species. The applicant must also demonstrate that for ESA-listed species, whether the permit will

further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species. Applicable regulations/statuses: 50 CFR 216.34(a)(1),(3), and (4); 216.41(b)(2 - 4) and (c)(1)(v); MMPA section 104(c)(3)(B); and 50 CFR 222.308(b)(4)(ii), (b)(6)(v), (c)(2), and (c)(4); 50 CFR 402.14 (c) and (d).

****Anticipated Effects on Animals and Measures to Minimize Negative Effects:*** This information is necessary to: (1) assess the environmental impacts of the proposed activity and conduct the appropriate level of analysis under NEPA, (2) determine whether the proposed activity is humane and does not present unnecessary risks to the health and welfare of marine mammals, (3) determine whether the proposed activity will have a significant adverse impact on the species or other components of the marine ecosystem, (4) determine the effects of the proposed activities on ESA-listed species and whether the permit, if issued, will operate to the disadvantage of such species, (5) determine whether appropriate monitoring will be conducted to adequately assess the effects of the permitted activities, and (6) prepare an initiation package and request consultation under section 7 of the ESA, as applicable. Applicable regulations: 50 CFR 216.33(c)(v) and (d)(i and iv), 216.34(a)(1) and (4), 216.41(b)(4), and 222.308(b)(11), (c)(2) and (c)(5); 50 CFR 402.14 (c) and (d).

****Resources Needed to Accomplish Objectives and Disposition of Tissue Samples:*** Applicants are required to demonstrate whether their expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application. If a live animal will be held captive or transported, the applicant's qualifications, facilities, and resources must be adequate for the proper care and maintenance of the marine mammal. Applicants are also required to indicate how they will dispose of, how they will store, or to where they will transfer remaining samples after analyses are completed. Applicable regulations: 50 CFR 216.34 (a)(5) and (6); 216.37(c); 50 CFR 222.308(b)(5)(ii), (iii), (v); 222.308(b)(6) and (c)(9-10).

****Public Availability of Product/Publications:*** MMPA regulations require that research results obtained under the authority of a special exception permit are published or otherwise made available to the scientific community in a reasonable period of time. This information is also used to determine that the proposed activity is for bona fide research purposes. Applicable regulations: 50 CFR 216.41(c)(ii) and 222.308(c)(4).

Captive Information

Applicants are required to address the following questions, *as applicable*.

- (a) Why removal from the wild is necessary and why animals cannot be obtained from captive or rehabilitated stock.

NMFS regulations allow for the use of stranded rehabilitated marine mammals for special exception purposes in lieu of taking animals from the wild, which protects wild stocks from impacts of removing individuals from the population. Any permanent removal of a marine mammal from the wild must be consistent with any applicable quota established by the Office Director. Applicants must justify the need for use of an endangered species and whether an alternative species can be used. Applicable regulations: 50 CFR 216.27(b)(4), 216.41(b)(3), and 222.308(b)(4); 50 CFR 402.14 (c).

- (b) The name and location of the rehabilitation facility where animals will be tested.

The applicant must provide the location where the take will occur (see other Location sections in this document for location justification and regulatory citations). NMFS also needs this information to ensure authorization needed under 50 CFR 216.27(c) has been obtained as it relates to the disposition of rehabilitated marine mammals for special exception permit purposes. NMFS also needs this information to determine a rehabilitation facility's compliance with their Stranding Agreement and applicable NMFS guidelines. This question is not applicable to non-mammal ESA-listed species (research on sea turtles in rehabilitation would require a USFWS permit; no other non-mammal ESA-listed species is rehabilitated).

- (c) The name and location of the captive facility holding the subject animals and, where possible, the identity of specific animals.

The applicant must provide the location where the take will occur (see other Location sections in this document for location justification and regulatory citations) and the age/sex and species (see Project Description justification and regulatory citations). This information is also used for marine mammal inventory purposes.

- (d) A copy of any license or registration issued by the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), any outstanding variances granted, and the most recent APHIS inspection report.

The APHIS is responsible under the Animal Welfare Act (AWA) for captive marine mammals and has established regulations and standards, "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" (9 CFR Part 3, Subpart E). Information regarding the appropriate licensure or registration, variances, and standing with APHIS is used to determine if the applicant's facilities are adequate for the proper care and maintenance of a

marine mammal. For any research involving captive marine mammals, the applicant must provide supporting documentation. If marine mammals are on public display incidental to research or enhancement, they must be held consistent with AWA requirements and standards. APHIS does not regulate activities involving fish, invertebrates, or reptiles. Applicable regulations: 50 CFR 216.34(a)(6); 216.41(a)(2), (b)(6)(v), (c)(1)(vi).

- (e) The proposal submitted to the appropriate Institutional Animal Care and Use Committee (IACUC) established under the AWA, the IACUC approval, and any comments and recommendations of the IACUC.

This information is used to support a determination that the permitted activities will be conducted in a humane manner. Applicable regulations/statutes: 50 CFR 216.34(a)(1) and MMPA section 104(b)(1)(B).

- (f) A written statement from the responsible veterinarian or expert certifying that the facilities, methods of care and maintenance, and methods of transport will be adequate to ensure the well-being of the animals *and, for marine mammals*, will comply with all care and transport standards established under the AWA.

This information is used to determine if the applicant's qualifications, facilities, and resources are adequate for the proper care and maintenance of protected species. For any research involving captive marine mammals, the applicant must provide supporting documentation. If marine mammals are on public display incidental to research or enhancement, they must be held consistent with AWA requirements and standards. For ESA-listed species, the applicant must provide a statement from a licensed veterinarian or recognized expert verifying methods of transport and maintenance are adequate to provide for the well-being of the animals. Applicable regulations: 50 CFR 216.34(a)(6); 216.41(a)(2), (b)(6)(v), (c)(1)(vi); and 222.308(b)(7)(vi).

- (g) *For ESA-listed species:* Describe the care and maintenance of the animals, including a complete description of the facilities where they will be maintained, how they will be maintained, and the qualifications of husbandry staff.

Under the ESA, a complete description of how listed species will be maintained in captivity is required to ensure the applicant's qualifications and facilities are appropriate for the proper care and maintenance of the species. This information is also needed to determine whether the permit would further a bona fide and necessary scientific purpose or enhance the propagation or survival of the affected species, and to determine that the resources are adequate for the applicant to successfully accomplish the objectives stated in the application. For scientific research involving captive marine mammals, the applicant must submit supporting documentation. For enhancement permits involving marine mammals, the proposed captive maintenance must contribute directly to the survival or

recovery of the species. Applicable regulations/statutes: 50 CFR 222.308(b)(8) and 216.41(a)(2) and (b)(6)(iv) and MMPA section 104(c)(4).

- (h) Whether a captive breeding program will be established and, if so, justification.

This information is used to describe the proposed action as it relates to research or enhancement and to determine whether proposed breeding is consistent with a recovery plan. Applicable regulations: 216.41(b)(6) and 222.308(b)(9).

- (i) Indicate the disposition of captive animals at the termination of research or enhancement activities. This information is necessary to determine if the subject animals would be euthanized or released to the wild; or whether the animals would be transferred to another disposition (e.g., public display), or kept in a long-term research or enhancement program, and to permit accordingly. Any marine mammals held in captivity under an enhancement permit must be returned to the wild as soon as feasible; justification for other disposition must be provided. Captive marine mammals may not be released to the wild unless authorized by a scientific research or enhancement permit. Applicable regulations/statutes: 50 CFR 216.35 (e), 216.41(c)(2) and MMPA section 104(c)(4)(B); and 50 CFR 222.308(b)(9) and (c)(9).
- (j) If release of captive animals to the wild is proposed, state the length of time the animals will be held, no matter how temporary, and describe the protocols for the release, including mitigation and monitoring protocols.

This information is necessary to ensure there will be no disease transmission between released animals and the wild population; that genetic exchange has been taken into consideration; and that the animals have necessary skills to survive in the wild. Such information is necessary to ensure that the permitted activity: (1) is humane and does not present any unnecessary risks to the health and welfare of marine mammals; (2) will not have a significant adverse impact on the species or stock; and (3) will not operate to the disadvantage of an ESA-listed species. Release of captive marine mammals must be conducted pursuant to a scientific research or enhancement permit. Applicable regulations: 50 CFR 216.33(e)(4)(ii), 216.34(a)(1) and (4), 216.35(e), and 222.308(c)(2); 50 CFR 402.14 (c) and (d).

Project Locations

Permits must specify locations of authorized take or import/export. Necessary to determine if work will be conducted in U.S., and therefore, whether a permit is needed. This information is also necessary for considering impacts to protected species and for conducting the appropriate environmental analyses under NEPA, MMPA, and ESA. Applicable regulations/statutes: 50 CFR 216.33(a), 216.36(a)(1)(iii), and MMPA section 104(b)(2)(B); and 50 CFR 222.308(b)(6)(i) and (iv), 222.308(d)(2); 50 CFR 402.14 (c).

Take Information

Applicants are required to enumerate the number of protected species, by species/stock, age, sex, location, and manner in the form of a table. This table is used to verify the number of animals requested to be taken as described in the narrative portion of the project description and is used to create the take table for the permit, once issued. Further justification and the applicable regulations are included above under “Project Description.”

National Environmental Policy Act (NEPA) Considerations

In addition to information contained in other sections of the application as noted, the questions posed in this section of the application are necessary considerations under NEPA. These questions address such things as whether new or novel techniques will be used and adopted by others (i.e., if a precedent will be set); whether there is risk from hazardous substances or infectious agents; what impacts may occur to unique or protected geographic areas, including refuges, sanctuaries, or critical habitats; whether the work could cause loss or destruction of scientific, cultural, or historic resources; and whether there could be introduction or spread of non-indigenous or invasive species as a result of the permitted activity. Applicable regulations: NEPA CEQ regulations.

Project Contacts

This section is necessary for identification and contact purposes. A Permit Holder is ultimately responsible for all activities of individuals operating under the permit. A Responsible Party must be named if the applicant is an organization. Special exception permits are not transferable. The Principal Investigator and Co-investigators share responsibility in the absence of the Permit Holder. These persons will be named on the permit as responsible for the authorized activities and are subject to enforcement actions. Personnel involved in the authorized activities must be reasonable in number and limited to those individuals who perform a necessary function and support personnel included for purposes of training or as back up. Applicable regulations: 50 CFR 216.33, 216.35(i), 216.41(a), 216.41(c)(1)(iii-iv), and 222.308(b)(3).

Qualifications and Experience: Necessary to determine whether the individuals operating under the permit are qualified to successfully accomplish the objectives, conduct bona fide research or enhancement activities, carry out the specific types of take, and properly care for and maintain captive animals (as applicable). Individuals conducting activities authorized under a permit must possess qualifications commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications. Persons who require state or Federal licenses to conduct activities authorized under the permit must be duly licensed. Applicable regulations: 50 CFR 216.34(a)(5-6), 216.35(f-h), 222.308(b)(6)(vi), 222.308(b)(8)(v), and 222.308(c)(11).

Submit Application (Authentication and Certification)

Applicants must authenticate their identity by signature and certify that the information in the application is accurate, under penalties of the ESA and MMPA. Permits must be

applied for in good faith. Applicable regulations: 50 CFR 216.33(a), 216.33(e)(4)(i), 222.302(a), 222.303(f)(1), 222.308(b)(12-13), and 222.308(c)(1). Also required by 18 U.S.C. 1001.

Requesting a Modification

Modification Request Questions

This information is necessary to identify what type of modification is being requested and what processing steps are involved. The selections made on this screen dictate what fields are available for applicants to edit on the screens that follow. Applicants are required to provide information consistent with that required for a new permit (e.g., hypothesis, methods, effects and mitigation), and the justification for requiring this information from applicants is the same as described above, as applicable to the modification being requested. Applicable regulations: 50 CFR 216.39 and 222.306.

Reports

Section 104(c) of the MMPA requires "...any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock [to] furnish to the Secretary a report on all activities carried out by him pursuant to that authority." Permit holders are required to submit reports in accordance with the requirements established in their permits. Reports are of several types and may be submitted annually or on occasion. For scientific research and enhancement permits, the annual report is a summary of all research and enhancement activities conducted during the preceding year. Annual reports are necessary for NMFS to determine that the permit holder is abiding by the conditions of the permit, to track numbers of animals taken and review the effects of the authorized take on the species. Reports are also necessary to determine whether the permitted research or enhancement activities met stated objectives and determine whether the research findings were to be published or otherwise made available to the public or scientific community. Applicable regulations: 50 CFR 216.27, 216.38, 216.45, 222.301(h) and 222.308(b)(11).